

2024:PHHC:115771



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13845-1994 (O&M)
Date of decision : 02.09.2024

GURPAL SINGH

...Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Arun Walia, Advocate
and Mr. Dinesh Sharma, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARSH BUNGER, J.

Petitioner (Gurpal Singh) has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for setting aside the order dated 18.11.1993 (Annexure P-7) passed by the learned Financial Commissioner (respondent No.3); order dated 04.05.1991 passed by the learned Divisional Commissioner, Ferozepur (respondent No.4) and order dated 03.11.1987 passed by the learned Special Collector (Agrarian), Ferozepur (respondent No.2).

2. Briefly, the learned Collector (Agrarian), Ferozepur at Fazilka, vide his order dated 16.02.1961 (Annexure P-2) declared 5 standard acres – 8¾ units of land of the petitioner as surplus. It appears that after the land of the petitioner was declared as surplus, the consolidation operation

commenced in the village, where the land of the petitioner was situated. After consolidation, the petitioner was allocated another piece of land (new holding). It transpires that vide Registered Sale deed dated 03.05.1972, the petitioner sold 16 *bighas* 16 *biswas* of land to the private respondents herein i.e. respondents No.5 to 12.

3. After the consolidation operation in the village, the Special Collector (Agrarian), Fazilka, took out the proceedings under Section 24-A(2) of the Punjab Security of Land Tenures Act, 1953 (in short 'the 1953 Act') for separation of the surplus area and vide order dated 27.09.1984, the surplus area was separated.

4. It appears that the private respondents challenged the order dated 27.09.1984 passed by the learned Special Collector (Agrarian), Fazilka by filing an appeal before the learned Commissioner, which came to be allowed vide order dated 07.04.1987 and the case was remanded for fresh decision.

5. After remand, the learned Special Collector (Agrarian), Fazilka decided the case vide order dated 03.11.1987 (Annexure P-3); whereby the land purchased by the private respondents was included in the reserved area of the petitioner and an equivalent area of other land of the petitioner was included in the surplus area.

6. An appeal filed by the petitioner against order dated 03.11.1987 (Annexure P-3) before the learned Commissioner, was dismissed vide order dated 07.05.1991 (Annexure P-4). A further revision petition (***ROR-387 of 1990-91***) filed by the petitioner against the order dated 07.05.1991 (Annexure P-4) before the learned Financial Commissioner, was also dismissed vide order dated 18.11.1993 (Annexure P-7).

7. In the afore-mentioned circumstances, the petitioner has filed the present writ petition before this Court for the relief, as noticed here-in-above.

8. Learned counsel for the petitioner submitted that the authorities below have erred in law and fact in passing the impugned orders. It is submitted that while determining the surplus area of the petitioner, no notice or any opportunity of hearing was afforded to the petitioner as he was a minor at that time. Petitioner claims that his date of birth is 25.10.1946 and no notice in Form 'F' was ever served upon him. It is further submitted that after the area of the petitioner was declared as surplus, the land of the village was subjected to consolidation operation, wherein, the petitioner suffered shrinkage of his land to the extent of 1 standard acre and the benefit of the said shrinkage was not extended to him. It is next submitted that after the consolidation operation, the petitioner was entitled to make selection of his permissible area under Section 24-A of the 1953 Act and to put the land purchased by respondent No.5 in the surplus pool, however, the same was not allowed and surplus area of the petitioner was not re-determined. It is still further submitted that the authorities below have wrongly concluded that the private respondents purchased the land out of the reserved area of the petitioner by relying upon a recital in the sale deed, whereas it is apparent from perusal of the said sale deed that the recitals therein are in different ink and added subsequently in the shape of a note at the end of the sale deed, therefore, no reliance could have been placed on that recital. It is also contended that the surplus area case of the petitioner is required to be decided under the new Act i.e. Punjab Land Reforms Act, 1972 (in short 'the 1972 Act') and in case, the benefit of

entitlement of a unit to every male member of the petitioner's family is extended then there would be no surplus area.

8.1 With the afore-said submissions, learned counsel for the petitioner prayed that the impugned orders be set aside.

9. Per contra, learned counsel for the respondent-State has opposed the submissions made on behalf of the petitioner. It is submitted that the petitioner has no *locus standi* to file the present writ petition as he had failed to challenge the original order dated 16.02.1961 (Annexure P-2) declaring the petitioner's land as surplus under the 1953 Act. It is submitted that once the original order dated 16.02.1961 (Annexure P-2), whereby the land of the petitioner was declared as surplus has never been challenged till date, the same had attained finality and the petitioner has no right to seek re-determination of his surplus area. It is further submitted that the proceedings under Section 24-A(2) of the 1953 Act, are only for a limited purpose, which only provides for separation of surplus area. It is submitted that the vendees of the petitioner had purchased the land from him from his reserved area and therefore, the petitioner cannot take dual benefit. It is further submitted that after the declaration of surplus land on 16.02.1961, the required notice under Form 'F' was duly served upon the petitioner vide Endorsement No.80/AGR dated 01.03.1961, however, he failed to come present in response thereto. It is next submitted that the proceedings under Section 9(2) of the 1972 Act, have also been completed.

9.1 With the afore-said submissions, prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

11. During the course of the hearing, learned counsel for the petitioner has not disputed the fact that the original order dated 16.02.1961 (Annexure P-2), whereby the land of the petitioner was declared as surplus, has never been challenged by him till date. Accordingly, it must be held that the said order has attained finality. It is also not disputed that after the area of the petitioner was declared as surplus in Village Dangar Khera, the consolidation operation commenced in the said village and the proceedings under Section 24-A(2) of the 1953 Act, were commenced by the concerned authority for separation of the surplus area, according to which, 30 standard acres area of the petitioner was allowed to him as permissible area and the remaining 5 standard acres – $8\frac{3}{4}$ units were included in the surplus pool, vide order dated 27.09.1984. Said order dated 27.09.1984 was challenged by the private respondents herein, before the learned Commissioner, by way of filing an appeal, which was accepted vide order dated 07.07.1987 and the matter was remanded to the learned Collector, for afresh decision. Upon remand, the learned Collector (Agrarian), vide his order dated 03.11.1987, decided the matter by holding as under :-

“The case of surplus area of Shri Gurpal Singh son of Natha Singh resident of Dangar Khera, Tehsil Fazilka, District Ferozepur landowner was decided vide order dated 16-2-1961 passed by the Collector Agrarian, Fazilka, under the Punjab Security of Land Tenures Act, 1953 according to which an area measuring 35 Standard $8\frac{3}{4}$ units of this landowner on 15.4.53 was in his ownership. Leaving 30 Standard Acres area of the land owner as permissible area, the remaining 5 Standard $8\frac{3}{4}$ units area is included in the Surplus Pool. After the completion of consolidation of holdings of the village, the proceedings under Section 24-A(2) of the Punjab Security of Land Tenures Act,

1953, were carried out through order dated 27-9-84 passed by this court, according to which leaving 30 Standard Acres area of the landowner, as permissible area, the remaining 5 Standard 8¾ units area was included in the surplus pool. Against this order, Lal Chand, Siri Krishan, Chanan Ram, Mohan Lal, Badri Ram, Manphul, Ramji Lal, Tara Chand sons of Sheodan residents of village Danger Khera filed an appeal in the court of Commissioner Ferozepur Division, Ferozepur which was accepted vide order dated 7-7-1987 passed by the Commissioner and the case was sent to this court on remand in which the respected Commissioner has ordered that after hearing the appellants, the case be decided afresh, the Commissioner has also issued this direction in its order that when the case will be decided again, then in connection with these words “The land above-mentioned is not surplus but is the land of my reserved area, written on 3.5.72, signed Jagmohan Lal” which are written in the last of Sale-Deed, be enquired into. Shri Ram Lal Aneja, Counsel for appellants appeared. He, coming present told that when they had purchased the area, the landowner has given in writing that his land is of reserve area, is not of surplus. The Counsel also told this that when the Collector Agrarian Fazilka had passed orders of ownership of land on 16-2-1961, the area, which is purchased by them at that time, was the reserve area of landowner. The land owner has no right that he get declared surplus by selling the land out of the reserve area of the land. The landowner cannot avail double benefit according to law, therefore, the Counsel demanded that their purchased area was reserve, be kept reserved, photo-stat copy of the Registered Sale-deed dated 3.5.1972 produced in proof thereof. Counsel appearing for the landowner told that at the time of getting the sale-deed scribed, they did not get scribed the word “The above-said land is not

surplus, but is the land of my reserve area which is written in the end of the Sale-deed, but later on these words have been written without their consent without attestation of the document. The Counsel for the landowner also stated this that the words which have been written at the end of the document, that ink does not resembles with the ink of the other Sale-deed, from which it is clear that the vendees have got the words “The above-said land is not of surplus but is the land, of my reserve area” written later on. Therefore he demanded that the purchased area be reserved as surplus. In support of his plea (argument) the Counsel produced photo-stat copy of R.O.R. No.281 of 1982-83.

The arguments of the Counsel for the parties were heard and perused the evidence produced. This argument of the Counsel for the landowner that when he had sold the area to Lal Chand etc. vendees, it was not given in writing that the land is not surplus, but is the land of my reserve area. The photo-stat copy which is produced by the vendees, in support thereof, the original sale-deed was summoned from the Sadar record room. The lines which are written on the copy of Sale-deed, the same are on the original Sale-deed also, although there difference of ink seems to be there in these lines, but hand-writing seems to be of that very Document Writer Jagmohan Lal, who has scribed the Sale-deed. The Counsel for the landowner could not produce any evidence for falsifying these lines (for proving the falsification of these lines) that the words are not written at the time of scribe of Sale-deed or before presenting the document. According to the file, the area which is sold by the landowner, this area was reserve area of the landowner, from which it is clear that the vendees have purchased the Reserve Area. Therefore, the area purchased by the vendees is included in the reserve area of land-owner and the area to the extent of their value is

included in the surplus pool out of the reserve area of the landowner. The photo-stat copy of R.O.R. No.281 of 1982-83, which is produced by the Counsel for the landowner, is not applicable in this case. The Counsel for the landowner was afforded an opportunity to produce the list of surplus area, but no list was produced by him. Therefore, 5 Standard Acres 8¾ Units area is included in Surplus Pool as per Annexure 'A'. The notices be given to the present landowners under Section 9(1) of the Punjab Land Reforms Act, 1972 that was in possession of Surplus Area. R.O. be given within 10 days."

11.1 A perusal of the above extracted findings would show that after the remand of the matter, the area sold by the petitioner to his vendees was included in his reserved area and the area to the extent of their value was included in the surplus pool out of the reserved area of the land-owner. It is further borne out from the above extracted order that the petitioner was afforded an opportunity to produce the list of surplus area, however, it appears that no such list was provided by him and accordingly, 5 standard acres 8 ¾ units were included in the surplus pool. The said exercise was apparently in terms of Section 24-A of the 1953 Act, which reads as under:-

24A. Power to separate share of landowners in joint lands. - (1) Where a landowner owns land jointly with other landowners and his share of such land or part thereof, as ascertained from the record of rights, has been or is to be declared as surplus area, the officer competent to declare such area, or, where such area has been declared, the officer competent to utilize it, may on his own motion, after summary enquiry and affording to the persons interested in such land an opportunity of being heard, separate his share of such land or part thereof in the land owned by him jointly with other landowners.

(2) Where after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the officers referred to in sub-section (1) shall be competent to separate the surplus area of such person out of the area of land obtained by him after consolidation.

11.2 It is evident from the above extracted provision of Section 24-A of the 1953 Act, that the proceedings thereunder are not for declaring surplus area in the hands of a person but to separate surplus area of a person out of the area obtained by him after consolidation operation in the village. Therefore, there was no occasion for re-determination of surplus area of petitioner-Gurpal Singh.

11.3 The order dated 03.11.1987 has further been upheld by the learned Commissioner, Ferozpur as well as by the learned Financial Commissioner, Punjab, vide order dated 07.05.1991 (Annexure P-4) and order dated 18.11.1993 (Annexure P-7), respectively.

12. That apart, it is the categorical stand of the respondent-State that after consolidation operation also the area of petitioner was not diminished and he was allowed 30 standard acres only. Learned counsel for the petitioner has failed to controvert the aforesaid fact. There is nothing on record to indicate that the petitioner has suffered any shrinkage in his area on account of consolidation operation in the village nor it is forthcoming that the petitioner has not been allowed his due entitlement of 30 Standard acres of land. Therefore the submission of the petitioner that he was not given benefit of diminished area, is rejected.

13. As regards petitioner's contention of non-issuance of Form "F" is concerned, it is the stand of Respondent-State that Form "F" was issued to petitioner vide endorsement no. 80/Agr. Dated 01.03.1961. The said fact

also remains unrebutted on record, therefore this submission is also rejected.

14. I also do not find any merit in the submission that the petitioner had a right to include the land purchased by private respondents in surplus pool. It is the petitioner who voluntarily sold land to private respondents by making a recital in the sale deed that the area sold was a part of his reserved area and not that of surplus. Once the petitioner sold the land to private respondents with a clear understanding and recital in sale deed that the area sold was not of surplus, therefore he is not entitled to now include the land purchased by private respondents in surplus pool.

15. As regards contention of petitioner that his surplus area case was required to be decided as per the provisions of Punjab Land Reforms Act, it is observed that once the land of petitioner was declared surplus under the provisions of Punjab Security of Land Tenures Act, 1953 and the said determination of surplus area having attained finality, the petitioner cannot seek re-determination of surplus area under the 1972 Act.

16. No other argument has been raised.

17. In the afore-mentioned facts and circumstances, I do not find any merit in the present writ petition and the same is accordingly dismissed.

18. All pending application/s, if any, shall also stand closed.

September 02, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No